

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.982 OF 2006

National Insurance Co.Ltd.,
having it's Head Office and
Registered Office at 3, Middleton
Street, Kolkatta, a Branch Office
at Latur and a Divisional Office at
Hazari Chambers, Station Road,
Aurangabad, Now through the
Divisional Manager at Aurangabad.

**...APPELLANT
(Orig.Respdt.No.2)**

VERSUS

1. Smt. Sunita w/o Avinash Kambale,
Age 23 years, Occu. Household;
R/o. Kini (Yelladevi), Tq. Udgir,
Dist. Latur.
2. Padmabhushan s/o Avinash Kambale,
Age 3-1/2 months - a minor - u/g of
his natural mother Smt. Sunita
w/o. Avinash Kambale, Respdt.No.1.
3. Pranita d/o Avinash Kambale,
Age 7 months - a minor, u/g of
her natural mother Smt.Sunita
Avinash Kamble, Respdt. No.1.
4. Hausabai w/o Raghunath Kamble,
Age 60 years, Occu. Household;
R/o Kini (Yelladevi), Tq. Udgir,
Dist. Latur.

...RESPONDENTS

(Respdts.No.1 to 4:
Orig. Claimants No.1 to 4)

5. Mrs. Uma w/o Sangiv Limaye,
Age Major, Occu. Business,
R/o Karad Nagar, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

...RESPONDENT
(ORIG.RESPDT.NO.1)

- (6. Haridas s/o Narayan Kendre,
Age 33 years; Occu. Driver;
r/o M.S.R.T.C. Department,
Ahmedpur.)

(Respondent no.6 deleted as per Hon'ble
Court's order dt.5.9.2006)

RESPONDENTS
(Orig.Respdt.No.3)

7. Divisional Controller, Maharashtra
State Road Transport Corporation,
Division, Latur.

...
...RESPONDENT
(ORIG.RESPDT NO.4)

Shri R.C.Bora, Advocate, h/f Mr. P.F.Bafna, Advocate for
appellant.

Mr.Milind Patil, Advocate for respondent no.5.

Mrs. R.D.Reddy, Adv., for respondent no.7.

...
CORAM: P.R.BORA, J.

DATE : JUNE 6th, 2017

JUDGMENT:

1. The appellant Insurance Company has filed the

present appeal against the judgment and award dated 7th of October, 2004, passed by the Motor Accident Claims Tribunal at Udgir in M.A.C.P.No.162/2002 (Old MACP No.246/2001).

2. Respondent nos. 1 to 4 had filed the aforesaid claim petition claiming compensation on account of death of Avinash Raghunath Kamble who died in a vehicular accident occurred on 10th of May, 2001, having involvement of a mini Bus bearing Registration No.MH-26-C-4584 and State Transport Bus bearing registration No. MH-20-D-1773. Learned Tribunal after having assessed the evidence brought before it has allowed the claim petition against the owner and insurer of the Mini Bus. The petition has been dismissed against the driver of the State Transport Bus and the State Transport Corporation. Aggrieved thereby, the Insurance Company has preferred the present appeal.

3. Shri R.C.Bora, learned Counsel, holding for Shri P.P.Bafna, learned Counsel for the appellant Insurance Company, at the outset submitted that though the

Insurance company has raised various grounds in exception to the impugned award, the only ground which is now being pressed by the Insurance Company is in relation to the quantum of compensation. Learned counsel submitted that without any cogent and sufficient evidence, the Tribunal has awarded the compensation of Rs.10,000/- inclusive of No Fault Liability compensation. Learned Counsel further submitted that the learned Tribunal has failed in appreciating that when the income of the deceased is on the higher side, while determining the amount of dependency compensation, the age of the deceased cannot be the only factor while selecting the multiplier. Learned counsel submits that in view of the income of the deceased, the Tribunal should not have applied the multiplier of 18 and in its place ought to have applied multiplier of 13.

4. Learned Counsel further submitted that the Tribunal has also erred in awarding non pecuniary damages. Learned Counsel, more particularly, assailed the grant of Rs.25,000/- by the Tribunal towards pains and agony. Learned Counsel submitted that since the claim

was arising out of the fatal accident, there was no propriety in awarding compensation to the claimants for pains and agony. Learned Counsel submitted that when the Tribunal has awarded compensation of Rs.50,000/- to the claimants towards loss of love and affection and has also awarded separate compensation of Rs.25,000/- to the widow of the deceased for loss of consortium, the Tribunal could not have again awarded compensation of Rs.25,000/- towards pains and agony. Learned Counsel further submitted that the amount of Rs.5,000/- granted by the Tribunal towards funeral expenses is also on higher side. Learned Counsel, therefore, prayed for modifying the award by redetermining the payable compensation.

5. Learned Counsel appearing for the original respondents supported the impugned judgment.

6. I have carefully considered the arguments advanced by the learned Counsel appearing for respective parties. I have perused the impugned judgment, the evidence on record and the other material available on record. There is no dispute that deceased Avinash was

serving as a Teacher and was drawing the net monthly salary to the tune of Rs.6,260/-. The Tribunal, while determining the amount of dependency compensation, has rightly deducted one third of the total income of the deceased towards personal expenses and has determined the compensation holding the dependency of the claimants for the income of Rs.4,173/- per month which annually comes to Rs.50,076/- by multiplying the same with the multiplier of 18. In so far as the selection of multiplier is concerned, it is the objection raised on behalf of the Insurance Company that having regard to the income of the deceased on higher side, the multiplier of 13 should have been applied instead of multiplier of 18. I am not convinced with the argument so advanced. The income of the deceased to the tune of Rs.6260/- per month cannot be said to be on higher side. In the circumstances, having regard to the age of the deceased of 28 years, the Tribunal has rightly applied the multiplier of 18. Thus, in so far as the amount of dependency compensation is concerned, it does not appear to me that the Tribunal has committed any error in calculating the said amount.

7. The Tribunal has awarded a sum of Rs.50,000/- towards loss of love and affection and the amount of Rs.25,000/- to the widow of the deceased towards loss of consortium. Though it was sought to be canvassed by the learned Counsel appearing for the appellant that the amounts as aforesaid awarded by the Tribunal are on higher side, the contention so raised is liable to be rejected. It does not appear to me that the compensation so awarded by the Tribunal under the heads of loss of love and affection and loss of consortium are in any way unreasonable or excessive. However, there is substance in the objections raised on behalf of the appellant as against the award of compensation to the tune of Rs.25,000/- towards pain and suffering. No such amount could have been awarded by the Tribunal. Present was not the petition filed by an injured claiming compensation on account of injuries caused to him or disablement sustained by him in the accident. In fact, when the Tribunal has awarded the compensation towards loss of love and affection and towards consortium, the Tribunal could not have again awarded the compensation towards pain and sufferings. To that extent, the impugned award needs to

be modified.

7. In view of the discussion made above, the appellants are held entitled to the total compensation amounting to Rs.9,25,000/- instead of the compensation of Rs.9,50,000/- determined by the Tribunal. Save and except decrease in the amount of compensation as aforesaid, the remaining part of the impugned award is kept as it is. Revised award be prepared accordingly. The Appeal is, thus, partly allowed. No costs.

(P.R.BORA)
JUDGE

...

agp/982-06fa